IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 156 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVINDBHAI CHHOTUBHAI PATEL HEIRS OF CHHOTUBHAI D PATEL

Versus

DIST REGISTRAR

Appearance:

MR JS PATEL for Petitioner

Mrs. Siddhi Talati, AGP for Respondents Nos. 1 & 2.

MR. D.C. Raval for MR ANAND for Respondent No. 3

MR DF AMIN for Respondent No. 4

SERVED BY REGD POST AD on Respondents Nos.5 to 10.

MR PT JASANI for Respondent No. 11 & 12.

SERVED BY AFFIX.-(R) for Respondent No. 13

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 17/04/2001

ORAL JUDGEMENT

This is a petition under Article 227 of the Constitution of India at the instance of the legal heir of the deceased Chhotabhai Desaibhai Patel, who was the Chairman of Anand Taluka Gram Vikas Mandal.

2. During the course of audit of the cooperative society's accounts certain transactions were found to be doubtful and/or questionable, and it was felt that the cooperative society has suffered considerable loss on account of those transactions. The Registrar of Cooperative Societies initiated an inquiry under Section 93 of the Gujarat Cooperative Societies Act, 1961 against the Chairman and Secretary of the said cooperative society.

2.1. The object of the inquiry was to ascertain whether the petitioner, as the Chairman of the society had, within the meaning of Section 93 "misapplied or retained, or become liable or accountable for, any money or property of the society". The doubtful transactions which resulted in a loss to the society of 1,00,100/rupees, broadly speaking consisted of making an advance payment by demand draft to one M/s. Shroff Trading Company for the purchase of 100 bundles of JC sheets of 24 gauge, and that such payment was made not only without receiving the goods but, also without ascertaining as to whether the vendor has despatched the goods in question. The order was placed on 17th April 1982 and advance payment by demand draft was made on 19th April 1982. Inspite of this situation, knowing full well that the goods have not been supplied inspite of advance payment, a further transaction was entered into with the same firm by purchasing goods worth Rs. 40,840/- by making payment in respect thereof by draft dated 1st May 1982, without any adjustment of the previous debt. Thirdly on 30th June 1982 another transaction was entered into with a sister concern by the name of Howrah Trading Company by making payment thereof in cash by going to Ahmedabad, without making any adjustment in respect of the earlier transactions.

2.2. A fullfledged inquiry as directed by the Registrar was conducted by the Inquiry Officer under Section 93 of the said Act, and as a result thereof the charges against the petitioner Chairman were found to be upheld and the petitioner Chairman was directed to pay to the society the aforesaid sum of Rs. 1,00,100/- (jointly and severally with the Secretary of the society).

2.3. The petitioner thereupon preferred an appeal under Section 153 of the said Act which was heard and decided by the Gujarat State Co-operative Tribunal, which by its judgment and order dated 28th November 1986 (Annexure "B" to the petition) dismissed the said appeal.

3. Hence the present petition under Article 227 of the Constitution.

4. Before proceeding further on the merits of the matter, it is desirable to keep in mind the observations of the Supreme Court in the case of Mohmmad Yunus Vs. Mohammad Mustaqim (AIR 1984 SC 38) and Khali Ahmed Bashir Vs. Tufelhussein S. Sarangpurwala (AIR 1988 SC 184), on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution. The Supreme Court has observed in the aforesaid two cases that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected. Suffice it to say that this Court cannot enter into the quality of the decisions rendered; at best, it may only examine the decision making process adopted by the fora below.

5. Only a few salient features require to be noted. The impugned judgment and order of the Tribunal, has used the words such as `negligence', `gross-negligence' and `carelessness' only in a loose sense inasmuch as the impugned judgment is in `Gujarati'. No advantage can be taken by the petitioner on account of this language, by suggesting that these were not the charges preferred against the petitioner and/or this is not the finding of the Inquiry Officer. As already stated above the scope of inquiry under Sec. 93 was as to whether the petitioner has "misapplied or retained, or become liable or accountable for, any money or property of the society".

6. The impugned judgment in appeal exhaustively deals with the entire evidentiary material on record in considerable detail. Even after a detailed hearing on the aspect of the evidentiary material, and the interpretation thereof, it is not possible to accept the only defence put up by the petitioner-Chairman that there were previous transactions with the very same firm entered into by the society where the society had made advance payment and had thereafter received the goods from the said firm. It was therefore sought to be suggested that the said firm had earned the trust of the society and that there was therefore no reason on the part of the Chairman to suspect that on this particular occasion the said firm would recover the value of the goods first and then refuse to deliver the goods.

6.1. As aforesaid, precedent by itself does not make good law and previous practice by itself does not constitute a sound commercial approach. It is not even suggested that the practice followed by the petitioner was the standard commercial practice. It is obvious that the petitioner acted not prudently but only out of blind faith. It is also established by appropriate evidence on record that the transactions in question which led to the loss of the aforesaid amount to the society were entered into on the personal responsibility and initiative of the petitioner-Chairman, that in fact he had no authority to make such purchases, and also that no member of the Managing Committee or General Body had authorised the petitioner-Chairman to enter into this transaction or similar transactions. In the premises aforesaid it could not possibly be suggested, at least legitimately, that this loss arising from this transaction was merely an instance of bad judgment on the part of the Chairman. It was certainly a bad commercial judgment to say the least; however when such judgment is coupled with lack of authority, lack of prudence, lack of consultation with the members of the Managing Committee and/or General Body, it would certainly amount to negligence and/or carelessness, and would also be covered by "accountability" as contemplated by that portion of Section 93 of the Co-operative Societies Act quoted hereinabove.

7. In the premises aforesaid it cannot possibly be urged that the view taken by the Tribunal is an instance of "no evidence" or that the impugned judgment would amount to a perversity in law if permitted to stand.

7.1. One aspect requires to be considered. The Registrar acting on the Inquiry Officer's report under Section 93 of the Act had directed, out of equitable considerations, that in case the co-operative society recovers any amount from the debtor-firm in the civil suit filed by it against the said firm for such recovery, a proportionate set off may be given to the petitioner-Chairman and the Secretary to that extent. This equitable benefit has been set aside by the Tribunal in its appellate judgment. The rationale, the logic and reasoning for setting aside this equitable benefit is most unsatisfactory. Certainly the object of Section 93 of the Co-operative Societies Act is not that the co-operative society should make a profit from the negligent acts of its officers. If on the facts of a case the due debt of the society is recovered from the debtor, obviously there would be no loss caused to the

society. If even a part of the amount is recovered from the original-debtor, the loss caused to the society due to the acts of its office-bearers would be reduced to the same extent. It is therefore just, equitable and in the interest of justice to direct that if the co-operative society recovers any amount from the defendant-firm in the pending suit, the liability of the present petitioner (jointly and severally with that of the Secretary) would stand reduced to a proportionate extent. It is accordingly so directed.

8. Subject to the aforesaid observations and directions no further direction is necessary.

9. Except as stated hereinabove I see no reason to interfere with the impugned judgment and orders in the present petition under Article 227 of the Constitution. This petition therefore requires to be rejected. Rule discharged with no order as to costs. Interim relief stands vacated.

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(rmr).